House ____ **Amendment NO.**____

Offered By

_____________________________________ _____________________________________

AMEND House Committee Substitute for House Bill Nos. 1179 & 1765, Page 1, in the Title, Lines 3 and 4, by deleting the words, "sales taxes on places of amusement, entertainment, recreation, games, athletic events, and manufactured homes" and inserting in lieu thereof the word, "taxation"; and

Further amend said bill, Page 1, Section 136.300, Line 13, by inserting after all of said line the following:

"140.910. 1. In addition to any other remedy provided by law for the collection of delinquent taxes due the state of Missouri, if the director has filed a certificate of lien in the circuit court as provided by section 143.902, 144.380, or 144.690, the director or the director's designee may issue an order directing any person to withhold and pay over to the department assets belonging to, due, or to become due the taxpayer. The director or the director's designee shall not issue the administrative garnishment if the taxpayer has entered into a written agreement with the department for an alternative payment arrangement and the taxpayer is in compliance with the agreement.

2. An order entered under this section shall be served on the person either by regular mail or by certified mail, return receipt requested, or may be issued through electronic means if the person has provided prior written consent to such service, and shall be binding on the employer or other payer on receipt. The person in possession of assets belonging to, due, or to become due the taxpayer may deduct a sum not to exceed six dollars per month as reimbursement for costs, except that the total amount withheld shall not exceed the limitations contained in the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673, as amended.

3. A copy of the order shall be mailed to the taxpayer at the taxpayer's last known address. The notice shall advise the taxpayer that the administrative garnishment has commenced and the procedures to contest such garnishment by requesting a hearing within thirty days from mailing or electronic issuance of the notice. At such a hearing the certified records of the department shall constitute prima facie evidence that the director's order is valid and enforceable. If a prima facie case is established, the obligor may only assert as a defense mistake as to the identity of the taxpayer, mistake as to payments made, or existence of an alternative payment agreement for which no default has occurred. The taxpayer shall have the burden of proof on such issues. The taxpayer may obtain relief from the garnishment by paying the amount owed.

4. An employer or other payer shall withhold from the earnings or other income of each taxpayer the amount specified in the order. The employer or other payer shall transmit the payments as directed in the order within ten business days of the date the earnings, money due, or other income was payable to the taxpayer. For purposes of this section, "business day" means a day that state offices are open for regular business. The employer or other payer shall, along with the amounts transmitted, provide the date the amount was withheld from the taxpayer.

Action Taken____ Date __________________________

5. An order issued under subsection 1 of this section shall be a continuing order and shall remain in effect and be binding upon any person to whom it is directed until a further order of the director. The director shall notify such person to whom such an order has been directed whenever the deficiency is paid in full.

6. If the order is served on a person other than an employer or other payer, it shall be a lien against any money belonging to the taxpayer that is in the possession of the person on the date of service. The person other than an employer or other payer shall pay over any assets within ten business days of the service date of the order. A financial institution ordered to surrender an account shall be entitled to collect its normally scheduled account activity surcharges to maintain the account during the period of time the account is garnished. For purposes of this section, the interest of the taxpayer in any joint financial accounts shall be presumed to be equal to all other joint owners.

7. An order issued under subsection 1 of this section shall have priority over any other legal process under state law against the same income or other asset, except that where the other legal process is an order issued under section 452.350, 454.505, or 454.507, the withholding for child support shall have priority.

8. No person who complies with an order entered under this section shall be liable to the taxpayer, or to any other person claiming rights derived from the taxpayer, for wrongful withholding. A person who fails or refuses to withhold or pay the amounts as ordered under this section shall be liable to the state in a sum equal to the value of the wages or property not surrendered, but not to exceed the amount of tax deficiency. The director is hereby authorized to bring an action in circuit court to determine the liability of a person for failure to withhold or pay the amounts as ordered. If a court finds that a violation has occurred, the court may fine the person in an amount not to exceed five hundred dollars. The court may also enter a judgment against the person or other legal entity for the amounts not surrendered, court costs, and reasonable attorney's fees.

9. The remedy provided by this section shall be available where the state or any of its political subdivisions is the employer or other payer of the taxpayer in the same manner and to the same extent as where the employer or other payer is a private party.

10. An employer shall not discharge, or refuse to hire or otherwise discipline, an employee as a result of an order to withhold and pay over money authorized by this section. If any such employee is discharged within thirty days of the date upon which an order to withhold and pay over money is to take effect, there shall arise a rebuttable presumption that such discharge was a result of such order. This presumption shall be overcome only by clear, cogent, and convincing evidence produced by the employer that the employee was not terminated because of the order to withhold and pay over certain money. The director or the director's designee is hereby authorized to bring an action in circuit court to determine whether the discharge constitutes a violation of this subsection. If the court finds that a violation has occurred, the court may enter an order against the employer requiring reinstatement of the employee and may fine the employer in an amount not to exceed five hundred dollars. Further, the court may also enter judgment against the employer for the back wages, costs, attorney's fees, and for the amount of taxes that should have been withheld and paid over during the period of time the employee was wrongfully discharged.

11. If a taxpayer whose earnings or other income are subject to an order issued under subsection 1 of this section terminates the taxpayer's employment, the employer shall, within ten days of the termination, notify the department of the termination, shall provide to the department the last known address of the taxpayer, if known to the employer, and shall provide to the department the name and address of the taxpayer's new employer, if known. The director or the director's designee may issue an order to the new employer as provided in subsection 1 of this section.

12. For purposes of this section, "assets" include, but are not limited to, currency, any financial account or other liquid asset, and any income or other periodic form of payment due to a

taxpayer regardless of source, including, but not limited to, wages, salaries, commissions, bonuses, workers' compensation benefits, disability benefits, payments pursuant to a pension or a retirement program, and interest.

143.902. 1. In any case in which any assessment of tax, interest, additions to tax or penalty imposed under sections 143.005 to 143.998 has been made and has become final, the director of revenue may file for record in the recorder's office of any county in which the taxpayer owing such tax, interest, additions to tax or penalty resides, owns property or has a place of business, a certificate of lien specifying the amount of the tax, interest, additions to tax or penalty due and the name of the taxpayer liable for the same. Included in the notice of deficiency, the director shall notify the taxpayer of the department's intent to file prior to the filing of such certificate. Such notification shall contain a summary of the taxpayer's right to protest or contest such proposed deficiency. The director shall within twenty days after filing such certificate notify the taxpayer by first class mail postage prepaid.

(1) The lien shall arise on the date such assessment becomes final and shall be continuing and shall attach to real or personal property or interest in real or personal property owned by the taxpayer or acquired in any manner by the taxpayer after the filing of the certificate of lien. Unless sooner released or discharged, the lien shall expire ten years after the certificate of lien was filed, unless within such ten-year period, the certificate of lien has been refiled by the director of revenue with the recorder. Unless sooner released or discharged, a timely refiled certificate of lien shall be treated as if filed on the date of filing of the original certificate of lien, and shall expire ten years after the refiling. A certificate of lien may not be refiled more than one time.

(2) If any taxpayer fails to pay any tax, interest, additions to tax or penalties imposed by this chapter when due and the assessment for which has become final, the director may file for record in the office of the clerk of the circuit court of any county in which the taxpayer resides, or has a place of business, or owns property, the certificate of lien specifying the amount of the tax, interest, additions to tax and penalties due and the name of the liable taxpayer. The clerk of the circuit court shall file such certificate and enter it in the record of the circuit court for judgments and decrees under the procedure prescribed for filing transcripts of judgments. If the taxpayer does not reside, have a place of business or own property in the state of Missouri, the director may file for record a certificate of delinquency in the office of the clerk of the circuit court of Cole County. From the time of the filing of the certificate of lien or certificate of delinquency with the clerk of the circuit court, the amount of the tax, interest, additions to tax and penalties specified therein shall have the full force and effect of a default judgment of the circuit court until satisfied. Execution shall issue at the request of the director of revenue or his agent as is provided in the case of other judgments. No exemption shall be allowed from the levy of an execution issued for any delinquent tax, interest, additions to tax or penalties due under the provisions of sections 143.191 to 143.265. No bond shall be required of the director of revenue, his agent or of the sheriff before making the levy.

(3) The remedies in this subsection are cumulative and in addition to other collection methods given the director of revenue. No action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action hereunder to the exclusion of any other remedy or action for which provision is made.

(4) If any certificate of lien has been erroneously or improvidently filed, the taxpayer or any other person affected by the lien may notify the director of revenue. The taxpayer or other affected person shall provide the director with the reasons the filing of the certificate of lien is erroneous or improvident as to such person (including that the affected person's name or other identification is similar to the taxpayer's) and a list of creditors with current addresses who are affected by the department's action. Upon receipt of the creditor list, reasons and verification of the erroneous or improvident filing, the director shall release the lien as to the taxpayer or the affected person, as

necessary, and notify all creditors, stating the certificate of lien was filed erroneously or improvidently. If the certificate of lien was erroneously or improvidently filed the director shall forthwith make a determination in writing which shall become a public record in the same place the certificate of lien is noted under subsection 5 of this section that the same be expunged from the record and give written notice thereof, duly certified, by certified mail to the recorder of deeds and the clerk of the circuit court in the county where the same is recorded and upon receipt by the recorder of deeds and the clerk of the circuit court of the certification the recorder and clerk shall immediately cause such record to be expunged. The director shall take whatever steps are necessary to ensure the lien is expunged. The director shall pay a three-dollar fee charged by the recorder when an erroneously or improvidently filed lien is expunged.

2. The lien imposed under subsection 1 of this section may be wholly or partly released by filing for record in the office of the county recorder a release thereof executed by the director of revenue upon payment of the tax, interest, additions to tax and penalties or upon receipt by the director of revenue of security sufficient to secure payment thereof, or by final judgment holding such certificate of lien to have been erroneously or improvidently imposed.

3. The director may release any part of the property subject to the lien by filing with the county recorder a copy of the original lien document and an affidavit containing a legal description of the property, and stating that the property is to be released from the lien. The county recorder shall note the partial release in the same manner as provided in section 443.090. The release of any specific property shall not affect in any manner other property subject to lien.

4. Each county recorder shall receive a fee of three dollars which shall be charged for the filing of each certificate of lien and a fee of one dollar and fifty cents for each release of lien filed for record. Such amounts shall be paid to the county recorder from funds appropriated to the department of revenue for that purpose. The county recorder shall be reimbursed by presenting a statement, showing the number of certificates and releases filed, to the department of revenue each calendar quarter. The department of revenue is authorized to collect an additional penalty from each taxpayer equal to the cost of filing a certificate of lien or release of lien with respect to such taxpayer.

5. The director of revenue shall establish and maintain records for all certificates of lien filed under this section. The director shall also maintain records of all releases of lien filed under this section. The provisions of section 32.057 to the contrary notwithstanding, the records prepared by the director under this section, to the extent such information is or may be on file with the recorder, shall be open to public inspection. Such records established and maintained by the director shall not be the official record and are not conclusive evidence of any liability of any taxpayer to this state.

6. If any action is taken by the director under the provisions of this chapter; including, but not limited to, section 143.791, to alter or abate any assessment upon which a judgment has been filed under the provisions of subsection 1 of this section, the director is authorized to file a modification or satisfaction of such judgment."; and

Further amend said bill, Page 9, Section 144.044, Line 3, by inserting after all of said line the following:

"144.380. 1. In any case in which any assessment of tax, interest, additions to tax or penalty imposed under sections 144.010 to 144.510 has been made and has become final, the director of revenue may file for record in the recorder's office of any county in which the taxpayer owing such tax, interest, additions to tax or penalty resides, owns property or has a place of business a certificate of lien specifying the amount of the tax, additions to tax, interest or penalty due and the name of the person liable for the same. Included in the assessment, the director shall notify the taxpayer of the department's intent to file prior to the filing of such certificate. Such notification shall contain an explanation of the taxpayer's right to protest or contest such proposed assessment. The director shall within twenty days after filing such certificate notify the taxpayer by first class mail postage prepaid.

(1) The lien shall arise on the date such assessment becomes final and shall be continuing and shall attach to real or personal property or interest in real or personal property owned by the taxpayer or acquired in any manner by the taxpayer after the filing of the certificate of lien. Unless sooner released or discharged, the lien shall expire ten years after the certificate of lien was filed, unless within such ten-year period, the certificate of lien has been refiled by the director of revenue with the recorder. Unless sooner released or discharged, a timely refiled certificate of lien shall be treated as if filed on the date of filing of the original certificate of lien and shall expire ten years after the refiling. A certificate of lien may not be refiled more than one time.

(2) If any taxpayer fails to pay any tax, interest, additions to tax or penalties imposed by sections 144.010 to 144.525 when due and the assessment for which has become final, the director may file for record in the office of the clerk of the circuit court of any county in which the taxpayer resides, or has a place of business, or owns property, a certificate of lien specifying the amount of the tax, interest, additions to tax and penalties due and the name of the liable taxpayer. The clerk of the circuit court shall file such certificate and enter it in the record of the circuit court for judgments and decrees under the procedure prescribed for filing transcripts of judgments. If the taxpayer does not reside, have a place of business or own property in the state of Missouri, the director may file for record a certificate of delinquency in the office of the clerk of the circuit court of Cole County. From the time of the filing of the certificate of lien or certificate of delinquency with the clerk of the circuit court, the amount of the tax, interest, additions to tax and penalties specified therein shall have the full force and effect of a default judgment of the circuit court until satisfied. Execution shall issue at the request of the director of revenue or his agent as is provided in the case of other judgments. No exemption shall be allowed from the levy of an execution issued for such delinquent tax, interest, additions to tax or penalties and no bond shall be required of the director of revenue, his agent or of the sheriff before making the levy.

(3) The remedies in this subsection are cumulative and in addition to other collection methods given the director of revenue. No action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action hereunder to the exclusion of any other remedy or action for which provision is made.

(4) If any certificate of lien has been erroneously or improvidently filed, the taxpayer or any other person affected by the lien may notify the director of revenue. The taxpayer or other affected person shall provide the director with the reasons the filing of the certificate of lien is erroneous or improvident as to such person (including that the affected person's name or other identification is similar to the taxpayer's) and a list of creditors with current addresses who are affected by the department's action. Upon receipt of the creditor list, reasons and verification of the erroneous or improvident filing, the director shall release the lien as to the taxpayer or the affected person, as necessary, and notify all creditors, stating the certificate of lien was filed erroneously or improvidently. If the certificate of lien was erroneously or improvidently filed after August 13, 1987, the director shall forthwith make a determination in writing which shall become a public record in the same place the certificate of lien is noted under subsection 5 of this section that the same be expunged from the record and give written notice thereof, duly certified, by certified mail to the recorder of deeds <u>and the clerk of the circuit court</u> in the county where the same is recorded and upon receipt by the recorder of deeds <u>and the clerk of the circuit court</u> of the certification the recorder <u>and clerk</u> shall immediately cause such record to be expunged. The director shall take whatever steps are necessary to ensure the lien is expunged. The director shall pay a three-dollar fee charged by the recorder when an erroneously or improvidently filed lien is expunged.

2. The lien imposed under subsection 1 of this section may be wholly or partly released by filing for record in the office of the county recorder a release thereof executed by the director of

revenue upon payment of the tax, interest, additions to tax and penalties or upon receipt by the director of revenue of security sufficient to secure payment thereof, or by final judgment holding such certificate of lien to have been erroneously or improvidently imposed.

3. The director may release any part of the property subject to the lien by filing with the county recorder a copy of the original lien document and an affidavit containing a legal description of the property and stating that the property is to be released from the lien. The county recorder shall note the partial release in the same manner as provided in section 443.090. The release of any specific property shall not affect in any manner other property subject to lien.

4. Each county recorder shall receive a fee of three dollars which shall be charged for the filing of each certificate of lien and a fee of one dollar and fifty cents for each release of lien filed for record. Such amounts shall be paid to the county recorder from funds appropriated to the department of revenue for that purpose. The county recorder shall be reimbursed by presenting a statement, showing the number of certificates and releases filed, to the department of revenue each calendar quarter. The department of revenue is authorized to collect an additional penalty from each taxpayer equal to the cost of filing a certificate of lien or release of lien with respect to such taxpayer.

5. The director of revenue shall establish and maintain records for all certificates of lien filed under this section. The director shall also maintain records of all releases of lien filed under this section. The provisions of section 32.057 to the contrary notwithstanding, the records prepared by the director under this section, to the extent such information is or may be on file with the recorder, shall be open to public inspection. Such records established and maintained by the director shall not be the official record and are not conclusive evidence of any liability of any taxpayer to this state.

6. If any action is taken by the director under the provisions of this chapter; including, but not limited to, section 144.425, to alter or abate any assessment upon which a judgment has been filed under the provisions of subsection 1 of this section, the director is authorized to file a modification or satisfaction of such judgment.

144.690. 1. (1) In any case in which any assessment of tax, interest, additions to tax, or penalty imposed under sections 144.600 to 144.745 has been made and has become final, the director of revenue may file for record in the recorder's office of any county in which the taxpayer owing such tax, interest, additions to tax, or penalty resides, owns property, or has a place of business a certificate of lien specifying the amount of the tax, interest, additions to tax, or penalty due and the name of the person liable for the same. Included in the assessment, the director shall notify the taxpayer of the department's intent to file before the filing of such certificate. Such notification shall contain an explanation of the taxpayer's right to protest or contest such proposed assessment. The director shall, within twenty days after filing such certificate, notify the taxpayer by first class mail postage prepaid.

(2) The lien shall arise on the date such assessment becomes final and shall be continuing and shall attach to real or personal property or interest in real or personal property owned by the taxpayer or acquired in any manner by the taxpayer after the filing of the certificate of lien. Unless sooner released or discharged, the lien shall expire ten years after the certificate of lien was filed, unless within such ten-year period, the certificate of lien has been refiled by the director of revenue with the recorder. Unless sooner released or discharged, a timely refiled certificate of lien shall be treated as if filed on the date of filing of the original certificate of lien and shall expire ten years after the refiling. A certificate of lien shall not be refiled more than one time.

(3) If any taxpayer refuses or neglects to pay any tax, interest or penalty imposed by this law when due and the assessment of which has become final, the director may file for record in the office of the clerk of the circuit court in any county in which the taxpayer owing the tax, interest or penalty resides, or has a place of business or in which he has property, or all of them, a certificate specifying the amount of the tax, interest and penalties due and the name of the taxpayer liable. The clerk of the

circuit court shall file the certificate of record and enter it in the record of the circuit court for judgments and decrees under the procedure prescribed for filing transcripts of judgments. From the time of the filing of the certificate, the amount of the tax, interest and penalties specified therein shall have the force and effect of a judgment of the circuit court until satisfied by the director of revenue through **[**his**]** the director's duly authorized agents. Execution shall issue at the request of the director of revenue or **[**his**]** the director's agent as is provided in the case of other judgments. No exemption shall be allowed from the levy of an execution issued for the tax, interest and penalties and no indemnifying bond is required by the sheriff before making levy.

[2.**]** (4) The foregoing remedy is cumulative and in addition to the methods given the director of revenue for the collection of the Missouri sales tax which are here made available to **[**him**]** the director in the collections of the tax, interest, and penalties imposed by sections 144.600 to 144.745. No action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action hereunder to the exclusion of any other remedy or action for which provision is made.

(5) If any certificate of lien has been erroneously or improvidently filed, the taxpayer or any other person affected by the lien may notify the director of revenue. The taxpayer or other affected person shall provide the director with the reasons the filing of the certificate of lien is erroneous or improvident as to such person, including that the affected person's name or other identification is similar to the taxpayer's, and a list of creditors with current addresses who are affected by the department's action. Upon receipt of the creditor list, reasons, and verification of the erroneous or improvident filing, the director shall release the lien as to the taxpayer or the affected person, as necessary, and notify all creditors, stating the certificate of lien was filed erroneously or improvidently. If the certificate of lien was erroneously or improvidently filed after August 13, 1987, the director shall make a determination in writing which shall become a public record in the same place the certificate of lien is noted under subsection 5 of this section that the certificate of lien be expunged from the record and give written notice thereof, duly certified, by certified mail to the recorder of deeds and the clerk of the circuit clerk in the county where the certificate of lien is recorded. Upon receipt by the recorder of deeds and the clerk of the circuit court of the certification, the recorder and clerk shall immediately cause such record to be expunged. The director shall take whatever steps are necessary to ensure the lien is expunged. The director shall pay a three-dollar fee charged by the recorder when an erroneously or improvidently filed lien is expunged.

2. The lien imposed under subsection 1 of this section may be wholly or partly released by filing for record in the office of the county recorder a release thereof executed by the director of revenue upon payment of the tax, interest, additions to tax, and penalties or upon receipt by the director of revenue of security sufficient to secure payment thereof, or by final judgment holding such certificate of lien to have been erroneously or improvidently imposed.

3. The director may release any part of the property subject to the lien by filing with the county recorder a copy of the original lien document and an affidavit containing a legal description of the property and stating that the property is to be released from the lien. The county recorder shall note the partial release in the same manner as provided in section 443.090. The release of any specific property shall not affect in any manner other property subject to lien.

4. Each county recorder shall receive a fee of three dollars which shall be charged for the filing of each certificate of lien, and a fee of one dollar and fifty cents for each release of lien filed for record. Such amounts shall be paid to the county recorder from funds appropriated to the department of revenue for that purpose. The county recorder shall be reimbursed by presenting a statement, showing the number of certificates and releases filed, to the department of revenue each calendar quarter. The department of revenue is authorized to collect an additional penalty from each taxpayer equal to the cost of filing a certificate of lien or release of lien with respect to such taxpayer.

<u>5. The director of revenue shall establish and maintain records for all certificates of lien filed under this section. The director shall also maintain records of all releases of lien filed under this section. The provisions of section 32.057 to the contrary notwithstanding, the records prepared by the director under this section, to the extent such information is or may be on file with the recorder, shall be open to public inspection. Such records established and maintained by the director shall not be the official record and are not conclusive evidence of any liability of any taxpayer to this state.</u>

<u>6. If any action is taken by the director under the provisions of this chapter to alter or abate any assessment upon which a judgment has been filed under the provisions of subsection 1 of this section, the director is authorized to file a modification or satisfaction of such judgment.</u>"; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.